

Message Text

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ORIGIN OPIC-12

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FM SECSTATE WASHDC

TO AMEMBASSY BOGOTA

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E.O. 11652: N/A

TAGS: EFIN, CO

SUBJ: OPIC AND ANDEAN FOREIGN INVESTMENT CODE

REF: (A) BOGOTA 9180; (B) STATE 227167; (C) BOGOTA 9519

1. OPIC BOARD HAS APPROVED, AND DEPARTMENT CONCURS IN,
LIMITED RESUMPTION OF OPIC INSURANCE ACTIVITIES IN COLOMBIA,
APPLICABLE AT THIS POINT ONLY TO TWO PENDING PROJECTS--DIAMOND
SHAMROCK INVESTMENT IN PETROQUIMICA COLOMBIANAUND U.S. CONSTRUCTION
CONTRACTORS
BIDDING ON DARIEN GAP HIGHWAY BRIDGE PROJECT. BOARD DECISION
DOES NOT ESTABLISH PRECEDENT FOR CONSIDERING OTHER PROJECTS
SUCH AS HANNA. APPROVAL WAS CONDITIONED UPON RECEIPT OF
ASSURANCES FROM GOC THAT OPIC MAY REASONABLY EXPECT TO ENJOY
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THE RIGHT OF SUBROGATION OR SUCCESSION WITH RESPECT TO THE

INTERESTS OF AN INSURED OR GUARANTEED INVESTOR AND, FURTHER, TO THE NEGOTIATION OF OPIC CONTRACT PROVISIONS WITH U.S. INVESTORS DESIGNED TO MINIMIZE THE NEED FOR OPIC'S ASSERTION OF SUBROGATION/SUCCESSION RIGHT.

2. PROPOSED GC ASSURANCE WOULD BE ALONG LINES OF THE SECOND APPROACH SUGGESTED BY GOC FOREIGN MINISTRY OFFICER QUOTED PARA 2 REF C, THAT IS, A STATEMENT IN WRITING BY MINISTER OF JUSTICE OR OTHER APPROPRIATE CABINET LEVEL OFFICER SUBSTANTIALLY AS FOLLOWS: (A) COLOMBIAN LAW AFFORDS ACCESS TO COLOMBIAN COURTS AND ADMINISTRATIVE BODIES FOR FOREIGN (INCLUDING PUBLIC AND MIXED PUBLIC-PRIVATE) FINANCE AND INSURANCE AGENCIES ACTING AS SUCCESSORS TO THE INTERESTS OF INDEMNIFIED LENDERS, CONTRACTORS OR EQUITY INVESTORS; (B) OPIC IS SUCH AN AGENCY, WHOSE POTENTIAL ASSERTION OF THE RIGHT OF SUBROGATION OR SUCCESSION IS LIMITED TO THE INTERESTS OF INVESTORS (INCLUDING LENDERS AND CONTRACTORS) WHOSE PROJECTS HAD BEEN APPROVED FOR THE PURPOSE OF OPIC FINANCE OR INSURANCE BY THE GOVERNMENT OF COLOMBIA; (C) ARTICLE 51 OF THE ANDEAN CODE DOES NOT IMPAIR RIGHTS CONFERRED BY EXISTING NATIONAL LAWS OF MEMBER STATES.

3. WITH RESPECT TO CONSTRUCTION CONTRACT INSURANCE, OPIC WOULD WRITE INSURANCE ONLY WHERE CONSTRUCTION CONTRACT INCLUDES ARBITRATION PROVISIONS FOR RESOLUTION OF DISPUTES BETWEEN U.S. CONTRACTOR AND GOC WHICH CANNOT BE RESOLVED BY SUPERVISING ENGINEER. WITH RESPECT TO DIAMOND SHAMROCK'S NEW EQUITY INVESTMENT OF DOLS 700,000 (WHICH EMBASSY IN APRIL 1973 MEMO ENDORSED FOR OPIC INSURANCE), OPIC WOULD LIMIT COVERAGE TO 75 PER CENT AND 12-YEAR TERM AND DIAMOND SHAMROCK WOULD AGREE THAT IN EVENT OF EXPROPRIATION OF EITHER NEW OR OLD INSURED EQUITY IT WOULD PURSUE COLOMBIAN ADMINISTRATIVE AND JUDICIAL REMEDIES TO EXHAUSTION. IN ORDER TO MAINTAIN DIAMOND SHAMROCK'S FINANCIAL INTEREST IN SUCH CASE, OPIC WOULD BE OBLIGATED TO MAKE INDEMNITY PAYMENTS IN EQUAL INSTALLMENTS OVER A THREE-YEAR PERIOD RATHER THAN LUMP SUM. THROUGH THESE ADDITIONAL CONTRACT PROVISIONS, OPIC WOULD SEEK TO AVOID (AS, IN FACT, IT AND PREDECESSOR AGENCIES HAVE AVOIDED THROUGHOUT PROGRAM'S 25-YEAR HISTORY) ACTUAL ASSERTION OF SUBROGATION RIGHTS.

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4. REQUEST EMBASSY'S VIEWS AS TO WHETHER ASSURANCE OUTLINED IN PARA 2 ABOVE CAN AND SHOULD BE OBTAINED IN LIGHT OF CURRENT POLITICAL SITUATION, LIKELY GOC AND PUBLIC REACTIONS, COMMENTS AS TO TIMING OF APPROACH TO GOC, AND ADVICE AS TO WHETHER PARTICIPATION BY OPIC OFFICERS (VICE PRESIDENT POATS AND OPIC ATTORNEY) IS NEEDED IN PRESENTING REQUEST TO GOC.
DECON 6-30-74. RUSH

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